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January 22, 1996

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VIA TELECOPY

Damaris Urdaz Cristiano, Esq.
Assistant Regional Counsel
Office of Regional Counsel
Region II
U.S. Environmental Protection Agency
290 Broadway
New York, New York 10007

Re: SCP/Carlstadt -- De Minimis Settlement

Dear Ms. Cristiano:

Thank you, Betty Yu, Nickie DiForte and Rich Puvogel for meeting with Kevin Bruno, representing the non-settling members of the Cooperating PRP Group, and me on December 12 to discuss the draft Administrative Order on Consent (draft Order) for the proposed de minimis settlement at the SCP/Carlstadt Superfund Site, 216 Paterson Plank Road, Carlstadt, New Jersey. I believe that the meeting was very useful. As promised, I am writing to summarize the discussion to assist us in moving forward with the settlement.

Reopener

In response to EPA's demand for a reopener, the de minimis parties had proposed and the non-de minimis members of the Cooperating PRP Group supported a reopener if remediation costs at the site exceeded \$250 million. The draft Order provided for a reopener at \$175 million. The de minimis parties' position for the \$250 million dollar reopener has been set forth in previous correspondence. Ms. Yu responded on behalf of the Department of Justice (DoJ) regarding the lower trigger amount. Ms. Yu stated that DoJ believes that the settling

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parties receive certain intangibles from the settlement that should reduce the trigger amount for the reopener. After discussion, Ms. Yu stated that the Government's bottom line on the issue was a reopener that would apply if future remediation costs at the Site (i.e. costs other than the Feasibility Study, Interim Remedy and Focused Feasibility Study) exceeded \$200 million. I agreed to discuss this matter with the settling parties. I will respond after those discussions are completed. PRP

Recognition of Moneys Previously Paid By the Settling Parties

Every party that plans to participate in this settlement is a member of the Cooperating PRP Group and as such has helped to fund the Remedial Investigation ("RI"), the Feasibility Study ("FS") and the Interim Remedy ("IR"). The settling parties asked that the draft Order be amended to acknowledge these contributions and require a party that had not contributed to these costs to pay an additional amount in settlement moneys to account for its share of these activities. EPA and DoJ agreed to add language to the Order acknowledging the de minimis parties' contribution to these projects.

With regard to the concern that a party not be allowed to participate in the settlement unless it previously had contributed to the RI, FS and IR or paid an additional amount equal to what it would have paid had it contributed to these activities, the Government suggested that these parties would not obtain a release from and contribution protection for these activities. However, both the de minimis parties and the non-settling parties remain concerned that a stronger approach is needed. If a party could participate in the de minimis settlement without paying these costs, it would encourage parties to "lie-in-the-weeds." Both EPA and DoJ should have strong incentives to encourage parties to participate in activities such as the RI, FS and IR. All parties agreed to try to think of alternative approaches to this issue. Both

EPA Recovery of Response Costs

Both settling de minimis parties and the non-settling members of the Cooperating PRP Group were concerned about the language in Paragraph 35 regarding U.S. EPA recovery of response costs for the Site. The reasons for the concern were outlined in my December 8 letter. Both EPA and DoJ had objections to the proposed language in my December 8 letter. While we have agreed that EPA will receive twenty percent of the settlement moneys to cover past costs at the Site without regard to the specifics of the items for which EPA is entitled to reimbursement for oversight costs, the PRPs want to make clear that this allocation is made for the purpose of this settlement only and that the allocation shall have no impact on the recovery of oversight costs in any future matter involving EPA or the Respondents. EPA and DoJ agreed to propose language that would be acceptable to EPA and DoJ. gait

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Modifications to the Statement of Facts

Paragraph 34 of the draft Order states that each party "arranged for disposal or treatment or arranged with a transporter for disposal or treatment of a hazardous substance owned or possessed by such respondent or accepted a hazardous substance for transport to the site." The settling parties believe that it would be appropriate to add the word "allegedly" at the beginning of the quoted phrase from Paragraph 34. EPA indicated that it would not add the term "allegedly" to Paragraph 34 as EPA believes the issue is addressed by paragraph 4 of the draft Order, which states that the Consent Order does not constitute an admission of liability. I have conveyed this position to my clients and will let you know their response. PRP

In my December 8 letter I indicated that there were several statements in the description of the Site that we believed may not be accurate, such as the assertions regarding the status and use of the aquifers, and that I had asked William Warren, common counsel for the Cooperating PRP Group, for clarification on these issues from the PRP Group Technical Committee. At the time of our meeting I had not received a report from Mr. Warren. Subsequently I received a report and have the following comments on the Statement of Facts based on information supplied by Mr. Warren and Stephen Finn, the Facility Coordinator for the site.

1. OK Paragraph 8 - Site Vicinity. Peach Island Creek forms the northeast, not the northwest, site boundary, Paterson Plank Road the southwest boundary, Gotham Parkway the northwest boundary and the commercial establishment the southeast boundary. The area immediately northeast of the site is solely commercial/industrial. According to the RI, the nearest residence is on Washington Avenue, approximately one mile northeast of the site.
2. immediate Paragraph 9 - Floodplain. It would be more accurate to state that "much of the area in the vicinity of the site was formerly natural tidal wetlands." The amount of wetlands remaining in the vicinity of the site is much reduced. Peach Island Creek is tidal, and the site is located within its floodplain.
3. Paragraph 11 - Zoning. According to Ms. Debbie Lawlor, Supervisor of Land Use Planning of the Hackensack Meadowlands Development Commission, the site is in an area zoned Light Industrial B. This zoning permits a wide variety of uses, but hotel and retail use (such as restaurants), while not precluded, would require a "special exception." Certain conditions, including a public hearing, must be satisfied to obtain such an exception. The Cooperating PRP Group is not aware of any new office buildings in the immediate vicinity of the site.

Reference to new bldg will be omitted

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4.

Paragraph 12 - Aquifers. It would be more accurate to state, "the water table [delete the word "aquifer"] is located approximately 3 to 4 feet beneath the surface of the site and approximately 2 feet above the mean elevation of the Creek." It also would be more complete to note: "A glaciolacustrine varved unit exists between the water table and the till aquifer." At this time one can state only that "[i]t is inferred that the bedrock aquifer and the till aquifer are hydraulically connected" as there is no site-specific data to confirm the connection. The Brunswick aquifer is used as a municipal water supply, but the Cooperating PRP Group has been unable to confirm which municipality(ies) currently use it. Without an updated water use survey, we suggest revising the last sentence to read: "A number of commercial establishments also have reported drawn water from the bedrock aquifer for various purposes." If EPA has a water use survey that identifies the municipalities, please advise.

EPA to get
back

delete

5. Paragraph 18. Although it has been surmised that the contaminants found in the bedrock aquifer migrated there from the surface of the Site, this has not yet been confirmed because at this time there are no off-site wells in the bedrock, nor do we have sufficient information on bedrock aquifer hydrology to make this conclusion. We suggest modifying Paragraph 18 to read as follows below. We also would suggest changing the term "volatile organic solvents" to "volatile organic compounds" to make it consistent with the "VOC" abbreviation.

Throughout the 1970s, SCP handled, treated, recycled, stored and disposed of a wide spectrum of industrial materials waste at the Site. These materials included liquids, solids and sludges containing solvents, volatile organic compounds ("VOCs") and other hazardous substances. EPA alleges that during these operations many hazardous substances were released directly onto the soil at the Site and migrated into the underlying aquifers and into Peach Island Creek.

only change
is correct to
VOCs

Keep all words

In addition to these comments on the Statement of Facts, we have the following comments on the definition section which are factual in nature.

1. Paragraph 7(g). According to Mr. Warren, the Second Street address for Inmar is no longer in use. The current address is: 200 Centennial Avenue, Suite 202, Piscataway, New Jersey 08854.

OK

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2. Paragraph 7(s). According to Mr. Warren, it is correct that SCTC registered on February 11, 1966 with the State of New Jersey at the Prince Street address. Note, however, that the document does not discuss the subsequent history of SCTC. According to Mr. Warren that history is as follows: SCTC became Scientific, Inc., a Delaware corporation, on or about March 7, 1972 with a principal place of business at Meadow Road, Box 1403, Edison, New Jersey; Scientific Inc. changed its name to Transtech Industries, Inc. on or about June 17, 1986, with a principal place of business at 25 Chambers Brook Road, Branchburg, New Jersey. Note also that Transtech is not defined in ¶ 7.

OK

Waste-In Numbers

During our meeting both EPA and DoJ expressed concerns about the variance between the Cooperating PRP Group total waste-in numbers and EPA's waste-in numbers. The Government requested that the Cooperating PRP Group release information about the numbers under a confidentiality agreement. As Mr. Bruno and I stated at the meeting, the Cooperating PRP Group has not released those numbers in the past and we have no authority to provide those numbers to you. Moreover, as stated at the meeting, it is my understanding that the Cooperating PRP Group continues to object to releasing these numbers generally.

status
not
discuss

Alternatively the Government suggested that we use the EPA numbers; however you indicated that if the EPA numbers were used that you would raise the cost per gallon amount for the settling parties. As I stated at the meeting, we have no problem with using the EPA numbers, but cannot agree to an increase in the cost per gallon amount. The settling parties are paying a 100 percent premium on a \$100 million dollar remedy and have agreed to a reopener. There are already de minimis parties that cannot participate in the settlement because of the costs and to raise the payment would not be acceptable.

DISCLOS

In addition, you indicated that the numbers from certain of the proposed settling parties did not match EPA's numbers. I have contacted those parties regarding the discrepancies.

identify
put in
with my
PLEASE
provide
supporting
docs

Access to the Trust Fund

As we discussed, the non-settling members of the Cooperating PRP Group have significant concerns with the provision of the draft Order regarding their access to the fund for remediation expenses. Those parties questioned whether access should be limited to a consent decree and suggested that it should encompass any enforceable mechanism including a unilateral order. With regard to the concern that the parties would be required to sign a Consent Decree within 12 months of a ROD, Ms. Yu indicated that the Government would extend that time-frame

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to 18-months. You and Ms. Yu also indicated that the Government would consider a clause which would extend the time-frame in the event that good-faith negotiations regarding the Consent Decree were on-going. Ms. Yu also indicated that one of the concerns about allowing access to the funds without a consent decree was that the Government did not know the names of the Cooperating PRP Group members and without a Consent Decree there would be no way to enforce the agreement to complete the remediation work. As indicated at the meeting, Mr. Bruno and I will discuss these concerns with the non-settling members of the Cooperating PRP Group.

AT EPA'S
unreviewable
discretion

PRP

In addition to the above, the non-settling parties believed that the draft Order and the Trust Agreement should be amended to show them as third-party beneficiaries of the Trust Agreement. You indicated that you did not believe that the parties needed to be named in the Order; however, you did agree to the parties being named as third-party beneficiaries in the Trust Agreement. Mr. Bruno and I will discuss this with the parties.

PRP
govt

Allocation of Settlement Moneys to Past and Future Costs

STATUS -
revised trust
agreement

You stated that the Government agreed that 20 percent of the settlement funds should be allocated to past costs and 80 percent to future costs. All parties agreed that the Trust Agreement will need to be revised to make it consistent with the Order. However, as I stated at the meeting, I believe we should wait to revise the Trust Agreement until we reach agreement on the outstanding issues regarding the Order.

Installment Payment of Settlement Funds

As discussed, two parties who recently indicated an interest in participating in the settlement have stated that they cannot make a lump sum payment of the settlement amount. These two parties have requested an option to pay the settlement amount in separate payments. You indicated that the Government would be willing to consider such an arrangement provided that (1) the parties provide EPA with documentation regarding their inability to pay the settlement amount in a lump sum and (2) the Government receive its twenty percent immediately with the remaining payments to be made to the Trust Fund in installments. I have forwarded this information to the parties.

PRP

Thank you again for the meeting on December 12. I have started the process of discussing the issues from the meeting with the de minimis parties and with the non-settling members of the Cooperating PRP Group. However, the recent holidays and the snow have

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slowed those discussions. I anticipate that they will move at a faster pace now. In the interim, please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara Beth Watson", written in a cursive style.

Sara Beth Watson

cc: Elizabeth Yu Department of Justice (via telecopy)
Richard Puvogel, EPA (via telecopy)
Kevin Bruno, Esq. (via telecopy)
De Minimis Client Committee (via First Class Mail)
Representatives of Non-Settling Members of the De Minimis Subgroup (via telecopy)